

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
City of Mentor, Ohio	)	File No. 0007914543
	)	
Request for Waiver of Section 90.242(b)(4)(iv)	)	
of the Commission's Rules	)	

**ORDER**

**Adopted: February 21, 2018****Released: February 21, 2018**

By the Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau:

**I. INTRODUCTION**

1. On September 1, 2017, the City of Mentor, Ohio (Mentor, or the City) filed an application and waiver request to modify its Travelers Information Station (TIS) WQKU531 to expand the station's service area.<sup>1</sup> Mentor's TIS operates on frequency 1620 kilohertz (kHz) in the AM radio band. Mentor requests a waiver of Section 90.242(b)(4)(iv) of the Commission's rules, which imposes a 2 millivolt per meter (mV/m) field strength limit at 1.5 kilometers from TIS transmitters,<sup>2</sup> so that it may expand its 2 mV/m service contour to 3.0 kilometers from the transmitter.<sup>3</sup> The City plans to use a power level of 10 watts, the maximum power level permitted for TIS conventional antennas under the Commission's rules.<sup>4</sup> For the reasons we discuss herein, we grant the request for waiver.

**II. BACKGROUND**

2. Mentor is located east of Cleveland and has a population of "just under 50,000."<sup>5</sup> Mentor states that "[o]ur location and soil structure make us prone to flooding."<sup>6</sup> The City states that "a major portion of the city, recognized as the Headlands area, lies just north of the Mentor Marsh, which has only two points of ingress and egress."<sup>7</sup> Mentor reports that "[o]ver the years, the marsh has caught fire a number of times, making it susceptible to isolation as well as power outages."<sup>8</sup> Mentor uses its TIS to "provide critical information to residents and travelers in the event of just such an emergency."<sup>9</sup>

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<sup>1</sup> File No. 0007914543 (filed Sep.1, 2017), attached Waiver Justification.

<sup>2</sup> 47 CFR § 90.242(b)(4)(iv). "The field strength of the emission on the operating frequency shall not exceed 2 mV/m when measured with a standard field strength meter at a distance of 1.50 km (0.93 miles) from the transmitting antenna system." *Id.*

<sup>3</sup> Waiver Justification at 1.

<sup>4</sup> 47 CFR § 90.242(b)(4)(iii). "Transmitter RF output power shall not exceed 10 watts to enable the user to comply with the specified field strength limit." *Id.*

<sup>5</sup> File No. 0007914543, attached Letter from Kenneth J. Filiipiak, City Manager, City of Mentor, to Federal Communications Commission (dated Apr. 24, 2017) at 1 (Letter).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

3. Mentor states that its TIS does not cover all parts of the city.<sup>10</sup> Mentor argues that “enforcement of rule 90.242(b)(4)(iv) would have the unintended effect of increasing the cost of providing the expanded service to the public because it is estimated that two TIS stations - and the addition of synchronization equipment would be required to achieve the desired coverage - roughly doubling the cost to service the same area.”<sup>11</sup> Mentor “requests a waiver to utilize our full ten watts of power to effect a larger coverage pattern,” which “would be able to provide service to many of the areas which lack service now, including the Headlands.”<sup>12</sup> In support of its request for waiver, the City asserts that its TIS station can operate without causing interference to broadcast stations even with relaxation of the field strength intensity distance limitation.<sup>13</sup>

### III. DISCUSSION

4. Section 1.925(b)(3) of the Commission’s rules provides that: “the Commission may grant a request for waiver if it is shown that: (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.”<sup>14</sup> An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.<sup>15</sup> Based on the information before us, we are persuaded that Mentor has demonstrated that a waiver of Section 90.242(b)(4)(iv) is warranted.

5. When the Commission adopted the TIS rules, it stated that TIS “is intended to serve a 3 km zone with generally repetitive information pertinent to travelers.”<sup>16</sup> In limiting the TIS coverage zone, the Commission primarily was motivated to minimize the potential for TIS to cause interference to broadcast stations.<sup>17</sup> The Commission therefore adopted rules to limit the measured field strength at 1.5 kilometers from the transmitting site, limit the maximum antenna height, and limit the transmitter output power to 10 watts.<sup>18</sup> The Commission stated that “considering the likelihood of interference to broadcast stations, these steps should prevent interference situations from developing without unduly burdening TIS applicants.”<sup>19</sup>

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Waiver Justification at 1.

<sup>12</sup> Letter at 1.

<sup>13</sup> File No. 0007914543, attached Waiver Request at 1.

<sup>14</sup> 47 CFR § 1.925(b)(3).

<sup>15</sup> *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*), *aff’d*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broad. Corp.*, Memorandum Opinion and Order, 18 FCC Rcd 1414, 1415 (2003).

<sup>16</sup> *Amendment of Parts 2 and 89 of the Rules to Provide for the Use of Frequencies 530, 1606, and 1612 kHz by Stations in the Local Government Radio Services for the Transmission of Certain Kinds of Information to the Traveling Public*, Docket No. 20509, Report and Order, 67 FCC2d 917, 925 para. 27 (1977) (*TIS Report and Order*).

<sup>17</sup> *Id.* at 924 para. 25.

<sup>18</sup> *Id.* at 926 para. 31.

<sup>19</sup> *Id.* at 924 para. 25.

6. In accordance with our TIS spacing rules,<sup>20</sup> Mentor's TIS transmitter is not located within 130 kilometers of the predicted daytime 0.5 mV/m contour of any co-channel AM station or within 15 kilometers of the predicted daytime 0.5 mV/m of any first adjacent channel AM station. The spacing between the Mentor TIS transmitter and the closest co-channel AM broadcast station, WDND, South Bend, Indiana, is 411 kilometers; the spacing to the closest first adjacent channel AM broadcast station, KCJJ, Iowa City, Iowa, on 1630 kHz, is 844 kilometers. There are no AM broadcast stations within 1,000 kilometers on the other first adjacent channel, 1610 kHz, giving us confidence that the extension of the 2 mV/m contour of the TIS station will not result in harmful interference to broadcast stations, consistent with the underlying purpose of Section 90.242(b)(4)(iv). Therefore, we find that the underlying purpose of the rule would not be served or would be frustrated by application to the present case.

7. We find that the proposed expansion of Mentor's TIS service area while using output power of 10 watts would enable the City to better inform travelers of road and travel conditions throughout city and to alert the traveling public more effectively in the event of emergencies stemming from hazards to which Mentor is susceptible. Based on the record before us, we find that a grant of Mentor's request for waiver would serve the public interest. Therefore, we conclude that Mentor satisfies the Commission's waiver criteria.

#### **IV. ORDERING CLAUSES**

8. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Section 1.925 of the Commission's rules, 47 CFR § 1.925, that the Request for Waiver of the City of Mentor, Ohio, filed on September 1, 2017, IS GRANTED.

9. IT IS FURTHER ORDERED, that application File No. 0007914543, filed by the City of Mentor, Ohio, SHALL BE PROCESSED in accordance with this Order and the Commission's rules.

10. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 CFR §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm  
Chief, Policy and Licensing Division  
Public Safety and Homeland Security Bureau

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<sup>20</sup> 47 CFR § 90.242(a)(2).